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June 8, 2015

VIA ECF

Justice Sandra L. Townes, U.S.D.J. United States District Court 225 Cadman Plaza East Brooklyn, NY 11201

> Re: Brown v. Marriott International, Inc. Docket No.: 14 CV 5960 (SLT) (MDG)

Handling Attorneys: Alan C. Salzman, Mitchell G. Shapiro and Harvey Winer

Dear Judge Townes:

We represent the Plaintiff; defendant has filed a second request for a pre-motion conference on 6/3/15 (23). This is our response. Defendant made an earlier similar request dated 2/17/15(7) which you denied without prejudice (15) on 5/7/15, with leave to re-file after we filed our amended complaint, which we did on 5/12/15(16). Defendant now also attacks the sufficiency of the amended complaint (FRCP 12(b)(6)—failure to state a claim). Previously he only sought leave to move to dismiss on forum non conveniens and inability to join indispensable parties (e.g. the St. Kitts entities).

Initially we bring to your attention that currently we have pending before Magistrate Go an application to compel defendant to provide discovery which was just filed on 6/8/15(25). A 6/22/15 conference is scheduled, at which time it is anticipated that Magistrate Go will rule on disclosure. The significance of this discovery application to the Defendant's renewed request for a pre motion conference will be more fully outlined below.

FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Rule 8 (FRCP) "General Rules of Pleading" Section (a)(2)— only require a "short and plain statement of the claim showing that the pleader is entitled to relief". This has come to be known as "notice" pleading— all that is required is giving defendant notice of the claims and their grounds. While the statute has not changed, recent Supreme Court cases, including <u>Ashcroft</u> v. <u>Iqbal</u>, 556 US 662 (2009) cited by defense, require that the claims be "plausible". <u>Ashcroft</u>, supra however was a civil rights suit brought by a Federal detainee against the government regarding

treatment at a maximum housing unit, far afield from a bodily injury claim suffered as a result of defendants negligence.

One Federal commentator in analyzing <u>Ashcroft</u> states "trial courts may not use Rule 12(b)(6) to screen weak (but plausible) cases at the pleading stage: "the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims" Steven S Gensler WEST publishing <u>Rules and Commentary FRCP</u> 2012 Rule 12 Pages 231-2 (internal citations omitted). Our case on the other hand, is not abstruse but a claim for bodily injury based on a slip and fall in plaintiff's room at the St. Kitt's Marriott Hotel, due to the negligent maintenance and repair of a leaking ceiling air conditioner and vent. The same commentator reminds us that "The court must accept the factual allegations in the complaints as true and construe all facts in favor of the plaintiff" <u>Gensler supra page 232</u>. In this case at bar, defense clearly has been apprised of the nature of the claims.

And while plaintiff contends the amended complaint is adequate, if this court disagrees, it is urged that leave to amend again be permitted or that any dismissal be without prejudice (the three year negligence statute will not expire until July 2016).

However <u>Gensler</u> supra also points on out on page 233 that if discovery would tend to support the pleadings, this type of dismissal application be deferred pending receipt of the discovery (now pending before Magistrate Go), especially "where the information of wrongdoing typically lies in the defendant's hands".

Defendant cites <u>DeJesus</u> v. <u>Sears, Roebuck</u>, 87 F3d 65 for the proposition that the "agency" claims were inadequate but that case, a RICO matter, sounded in Fraud—invoking the higher pleading standards of Rule 9(b)—inapplicable to mere agency allegations. Defendant cites <u>Neubauer v. Eva-Health</u>, 158 FRD 281, also as to the agency/control issues. However again that was a SEC fraud case. But that case helps plaintiff in that it held that allegations of control need not even be made with particularity, <u>Coraggio v. Time Magazine</u>, 1995 US Dist Lexis 5399, also cited by defendant as to corporate control, was a civil rights case, and concerned standards promulgated by the NLRB as to when two businesses may be considered as a single employer.

As to the estoppel claims, defendant states in his 6/2/15 letter (23) that the Marriott website specific to St. Kitts indicates that "Hotels shown on Marriott.com may be operated under a license from Marriott International Inc. or one of its affiliates" (page 2 Document 23). We are striving to show, as we have alleged, and through the discovery we have and seek (see pending application to Magistrate Go) that defendant MII should be liable for this negligence case since MII induced plaintiff (and all its customers) to select the St. Kitts Marriott as their vacation location, by leading them to believe the defendant would stand behind the St. Kitts Hotel if something went awry. MII could have clearly disclaimed responsibility as they have done with their other entities (Exhibit "A") but here they merely announced the meaningless and ambiguous statement that the hotel "may be" operated under a license from MII "or one of its affiliates". In Exhibit "A" Marriott International Inc. seeks to distinguish itself from its own Marriott Vacation Club by using the following language "Marriott Vacation Club International and the programs and products provided under the Marriott Vacation Club Brand are not owned, developed or sold by Marriott International, Inc." Furthermore the MII, lists the St. Kitt's Marriott as one of its 500 worldwide locations (Exhibit "B"). Defendant asks how plaintiff was

prejudiced—she is at risk now for being denied or unable to receive adequate compensation for injuries sustained due to the negligence of Defendant.

In addition, as evidenced by pamphlets, bills, accident report, and pictures (Exhibit "C") obtained at the St. Kitts Marriott, the exhibits attached and a stay at the St. Kitts Marriott Hotel, offers not a shred of evidence that the Hotel is anything but an owned, operated, and managed Marriott International Hotel.

Defendant also challenges the Fraud allegations. FRCP Rule 9(b) requires that fraud be alleged "with particularity". We have done so; if the court disagrees, "violations of Rule 9(b) are pleading violations—not merits deficiencies—the trial court ordinarily should give the plaintiff leave to amend ..." Genlser supra at page 154. Furthermore, responses to the discovery demands should be received. Defendant points out that plaintiff must establish damage caused by her reliance on the fraudulent statements. Defendant begs the question by asserting that plaintiff will have an adequate alternative forum in St. Kitts. The court may take judicial notice that the costs associated with litigating in St. Kitts will prejudice this prosecution. As plaintiff required a horrific cervical fusion operation between cervical level C3-C4, C4-C5, C5-C6, and C6-C7 which necessitated the implementation of screws, rods and plates, the cost of bringing medical experts alone to St. Kitts, if available, would extinguish her case. Furthermore her damages would be limited compared to Brooklyn when one considers the severity of her surgery and its consequences.

Defendant cites <u>Sevison</u> v. <u>Cruise Ship Tours</u>, 1997 US Dist Lexis 12728, a maritime case, for the proposition that St. Kitts provides an adequate forum, but the forum non conveniens motion was denied in that case and American Law applied although the accident took place in St. Kitts. The defendant has the "almost impossible" burden to show when the plaintiff is American and the forum foreign, that plaintiff's choice is inconvenient. <u>Sevison</u> supra page 7 citing other cases. <u>Sevison</u> supra goes on to support plaintiff in the case at bar. Citing <u>Neeley v. Club Med</u>, 63 F3d 166, where an American Citizen diving instructor was injured in St. Lucia, the Court noted the majority of the tourists were American (same as the case at bar), and that defendants "continual and quite substantial commercial invitation of American tourists ... implicates interests in the United States" <u>Sevison</u> supra page 28 (same as case at bar) and citing <u>Neeley supra</u>, that "the United States has a great interest in assuring adequate protection for the life and health of Americans who are solicited in the United States to vacation at Club Meds or other foreign spots" <u>Sevison</u> supra page 29 (same as case at bar). Defendant should not be allowed to make a forum non conveniens motion. The cases cited by Defendant are esoteric in nature and bear no factual resemblance to the Brown case demonstrating the inadequacy of defendant's position.

INDISPENSABLE PARTIES

Defendant asserts he cannot implead the St. Kitts entities as they are not subject to this court's jurisdiction; however he fails to reveal to the court that defendant Marriott International Inc. (MII) and the St. Kitts entities are all named insureds on the same American Home Assurance Co. liability policy (Exhibit "D"). This policy was one of the few items defendant voluntarily disclosed. A New York State insurance company has insured everyone for the subject risk (personal injury)—and no defense attorney would ever implead insureds from the same policy as his own client. The real party in interest is the American Home Insurance Company.

Unabashedly and with malice aforethought, Marriott International Inc., has entered into a worldwide deceit that ensnared many as well as the plaintiff herein. Call it stacking the deck, dealing from the bottom or heads I win, tails you lose, the Marriott through falsehood and disguise is seeking to deny Ms. Brown her rightful claim to seek damages for the significant injury she suffered by having her case heard in the United States District Court. There is no question that MII has profited from Ms. Brown's stay at the St. Kitt's Marriott Resort and Casino, otherwise their name would not appear. Their name invokes reliability, experience and confidence to anyone staying at a Marriott. Its name brings business, brings a higher room rate, and brings higher expectation than local hotels not bearing the Marriott name.

It is also painfully obvious that defendant's position in seeking to transfer this case to St. Kitts is all about money. The parties are well aware that a transfer of this case would essentially deny plaintiff her day in Court. On the other hand, due to the terrible injury suffered by plaintiff and the availability of her witnesses here, the plaintiff if successful could receive a substantial sum of money for her injuries. Profit, greed, and lack of transparency should not prevail. The innocent little guy should not be crushed by giant corporate titans.

In the matter at hand Marriott International Inc., has benefited from its name and reputation. However, when Ms. Brown sustained her injury at its Hotel, it shyly casts its eyes downward and without remorse disclaims responsibility and seeks to remove her case to St. Kitts. This is a blatant example of Marriott's attempt to use the Court in furtherance of its nefarious scheme and deny plaintiff any chance of recovery for her injuries.

This is precisely why our fifth cause of action for punitive damages should stand. The officers and directors of defendant MII surely have contrived, developed, endorsed and approved of this bait and switch scheme. Lure tourists to St. Kitts or other Marriott International locations profit from their booking with Hotels with the Marriott name—then abandon them when they sustain injury due to the Hotel's negligence.

Very truly yours,

SALZMAN & WINER, LLP.

Mitchell G. Shapiro, Esq.

MGS/mc Encl.

cc: I

Daniel M. Stewart WHITE FLEISCHNER & FINO, LLP. Attorneys for Defendant 61 Broadway New York, NY 10006

EXHIBIT "A"

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Sweepstakes

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My-VacationClub.com has not yet been optimized for mobile devices.





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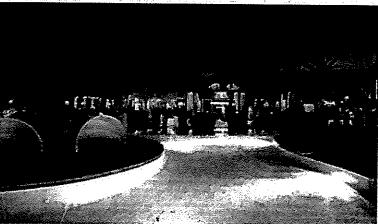
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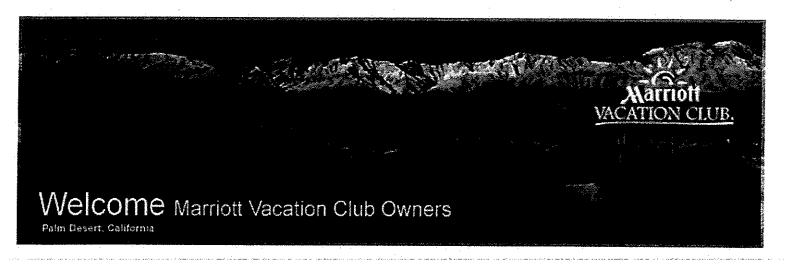


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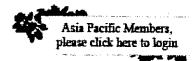
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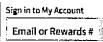


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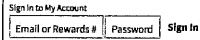
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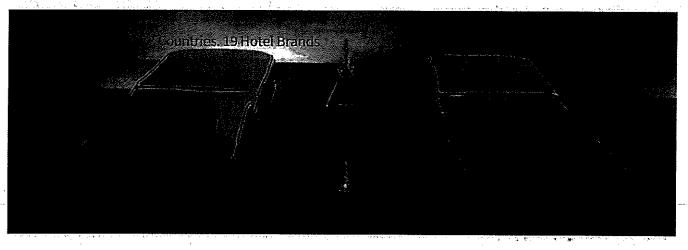






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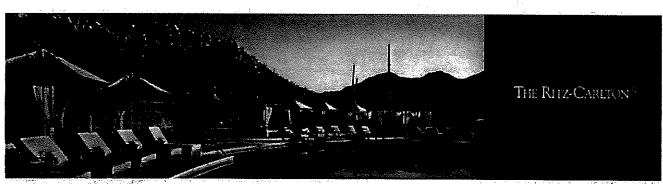












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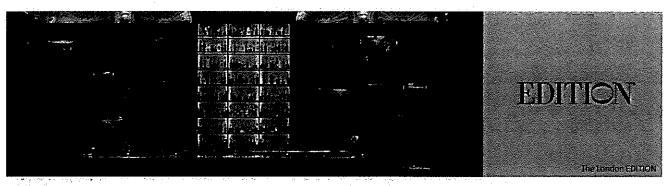
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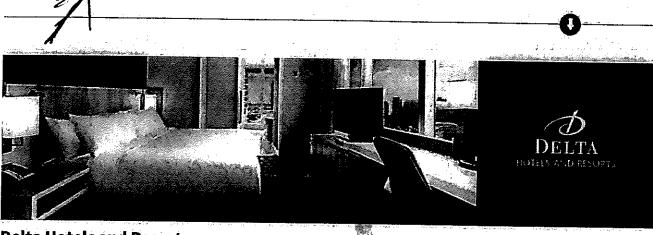




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Case 1:14-cv-05960-NG-RLM Document 27





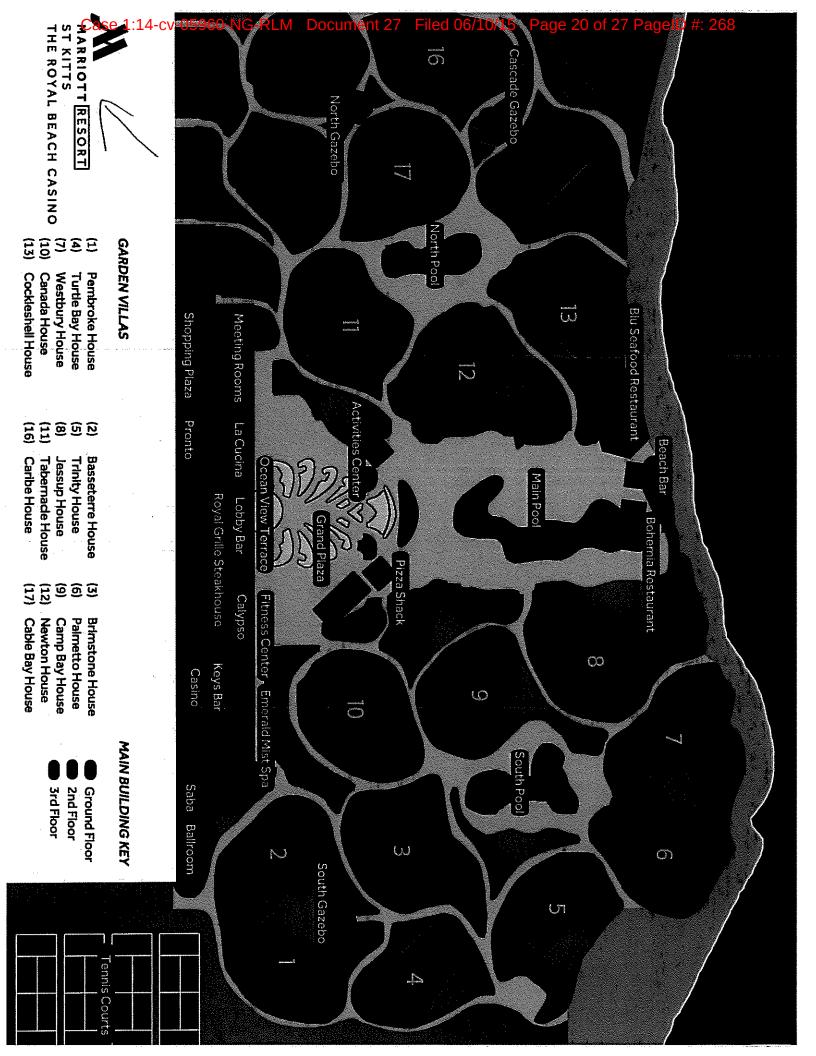
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RESORT & THE ROYAL BEACH CASINO

Marriott.

Veronica Browne-Mulvaney 463 East 56 St Brooklyn NY 11203 United States

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Company Name

Room No. Arrival Departure Page No. Folio / Inv. :

169614 / 81838062 Conf. No.

KTAYL097 User ID

Cashier No.: 1021

12215

1 of 6

17/07/13

24/07/13

	Thank you for staying with us		24/07/13	
Date	Description	Charges	Credits	
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20/07/13	Room Service	10.87		_
	Room# 00455 : CHECK# 345			2
20/07/13	Room Charge	84.00		
20/07/13	Island Enhancement Tax	1.68		
20/07/13	Service Charge	10.50		
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21/07/13	Calypso Restaurant	59.82		
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22/07/13	Calypso Cafe	8.02	•	
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	taxi fees and hospital and band aid			
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22/07/13	Room Charge	84.00	No.	
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Company Name

Room No.

12215

Arrival

17/07/13

Departure Page No. 24/07/13 2 of 6

Folio / Inv. :

169614/

Conf. No. User ID 81838062 KTAYL097

Cashier No. :

1021

Description		Charges USD	Credits
			USD
Room Charge		84.00	
Island Enhancement Tax		1.68	•
Service Charge	•	10.50	
VAT 10%		8.40	
Master Card / Euro Card XXXXXXXXXXXXXXX9781 XX	· · · · · · · · · · · · · · · · · · ·		630.94
			703.00
	Service Charge VAT 10% Master Card / Euro Card	Service Charge VAT 10% Master Card / Euro Card	Service Charge 10.50 VAT 10% 8.40 Master Card / Euro Card

	703.00	703.00
Balance	C	0.00 USD

Signature

Should you have any questions concerning your account, please contact our Front Office Manager at mhrs.skbrb.fom@marriotthotels.com or by dialing our Toll Free number 1-866-847-1139.

Please note that international credit cards are subject to exchange rates that may vary slightly from the one used by the hotel at checkout. In addition, some credit card companies may charge a fee for card use outside of the country of origin.

Please also observe that we do not accept personal checks to settle the bill.

St. Kitts Marriott Resort

Voluntary Statement:

With the understanding that I'm not obligated to give a statement and that I might seek legal advice at any time before any statement or declaration is given.

Full Name: (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:)
Mrs. Mr. Ms. 1 EXONICA TOROWN - MUCUALOY 4/9/56
Address: 463 EAST 56 ST
City: BROOKLY NY
Country: USA
State/Province:
ZIP: 11803 Email: Buffie3 C valizor Date: 9/18/13
Phone Number/s: 718 679-1713 - 917 584-9432
Work Address: DOE 5400 TILBERALE REGISTERS NURLE
To the best of your ability, describe the incident. Please include all information.
I got up to walk to the leather
I delipped and fell in water
near the leatherm door. There
was a leaking air AC.
Dest. in Helson
The state of the s
have reviewed this statement and believe t is true and accurate to the best of my recollection.
Signature: Witness: With Comer Cald Code
Associate: Guest: witness: Other: Report code: (office use only): 13

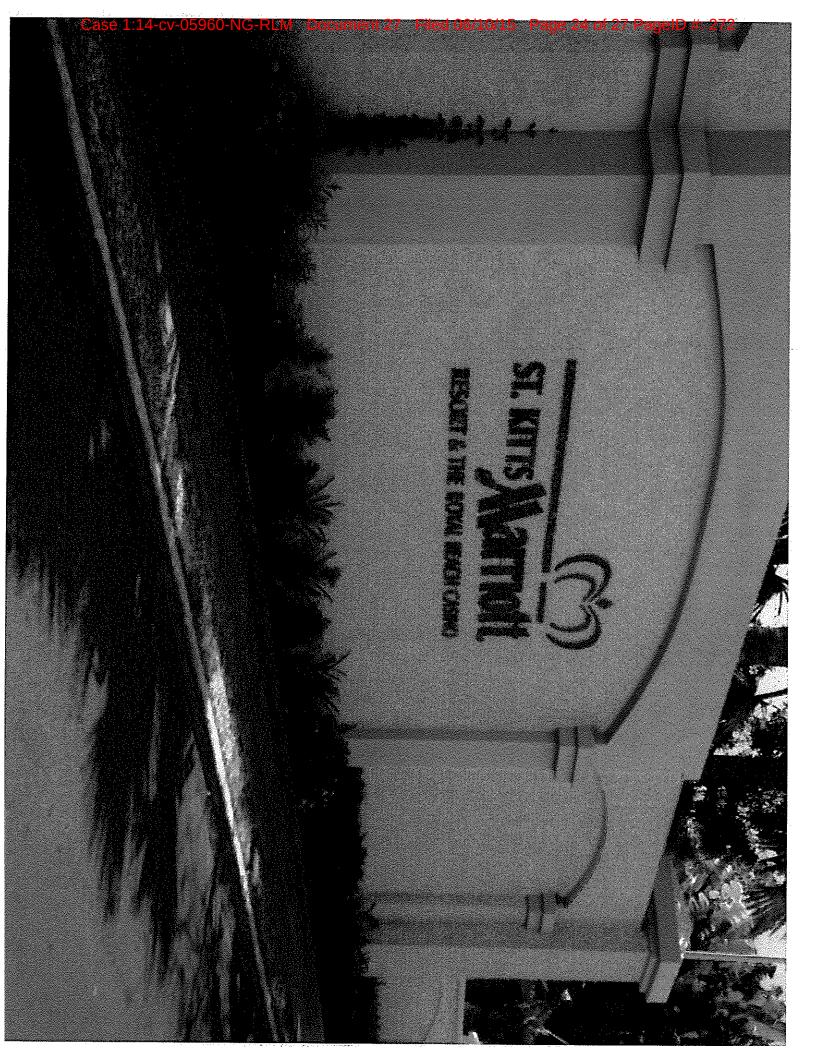


EXHIBIT "D"

FOREIGN COMMERCIAL GENERAL LIABILITY INSURANCE OCCURRENCE-BASED COVERAGE

American Home Assurance Company Executive Offices: 175 Water St. New York, NY 10038 **DECLARATIONS**

POLICY NUMBER: 03-1742

RENEWAL OF POLICY NO.: 03-1584

ITEM 1.	NAMED INSURE	D:	NAMED INSURED'S ADDRESS (includir	ig country):		
	Royal St. Kitts Go	olf Club, St. Kitts Marriott Resort & The sino, Marriott St. Kitts Beach Club and	Frigate Bay Road, Frigate Bay, St. Kitts. West Indies, St. Kitts § Nevis BUSINESS DESCRIPTION OF THE NAMED INSURED: Lodging, Hospitality, Contract Services, Contract Cetering and Other Business Activities.			
	☐ Individual ☑ Corporation ☐ Other: ☐ ounts are: ☑ U	☐ Partnership ☐ Joint Venture				
	s of all Premises , Rent, or Occupy	: Frigate Bay Road, Frigate Bay, !	St. Kitts, West Indies, St. Kitts & Nevis			
ITEM 2.	POLICY PERIO					
			Standard Time at the address set forth ab-			
ITEM 3.	LIMITS OF INSL	JRANCE: In consideration of receipt o exclusions of this policy, we	if the full premium, and subject to all the te agree to provide the following limits:	rms, conditions, and		
	Master Co	ontrol Program Aggregate:	Not Applicat	le		
	General A	Aggregate Limit (Other Than Prod-Comp C	Operations): Not Applicat	ile		
			npleted Operations Aggregate Limit: \$3,000,000			
		& Advertising Injury Limit:				
		currence Limit:	\$3,000,000 \$10,000			
	Medical E	Expense Limit:				
		To Premises Rented To You Limit:	\$3,000,000			
ITEM 4.	PREMIUM:					
E	xposure	Premium Basis	Rate	Premium		
	l Liability/Auto	Revenues/# of Units	Flat Charge	<u> </u>		
			Total Premium Payable at Inception:	REDACTED		
			Minimum Earned Premium:			
In Case of Loss, Notify: WorldSource Claims E-mail: worldsourcenyclaimsreporting@chartisinsurance.com Web; http://www.chartisinsurance.com/wsclaimsreporting Fax: +1.212.881.9002		urance.com/wsclaimsreporting	Broker's Name & Address: CGM Insurance Brokers (Barbados), Ltd. Haggatt Hall, St. Michael, Bridgetown, Barbados, West Indies BB11059	Commission: Included		
l <u></u>						

AUTHORIZED REPRESENTATIVE